



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 438

[CMS-2390-F4]

RIN-0938-AS25

Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects technical errors that appeared in the correcting amendment published in the January 3, 2017 **Federal Register** (82 FR 37 through 40) entitled, "Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability; Corrections."

DATES: Effective Date: This correcting document is effective [**Insert date of public inspection**].

Applicability Date: The corrections indicated in this document are applicable beginning immediately.

FOR FURTHER INFORMATION CONTACT: Elmer Barksdale, 410-786-1943, Gaysha Brooks, 410-409-3837, or Annette Brewer, 410-786-6580.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2016–31650 (82 FR 37 through 40), the correcting amendment entitled, “Medicaid and Children’s Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability; Corrections” there were technical errors that are identified and corrected in this correcting document. These corrections are applicable immediately.

II. Summary of Errors in Regulation Text

On page 39, we made technical errors in the amendatory instructions amending the regulation text of §438.358(c)(3) and (4). Therefore, the Office of the Federal Register was not able to properly correct the regulations text as intended.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. In addition, section 553(d) of the APA mandates a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA requirement for notice and comment, and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest; and includes a statement of the finding and the reasons for it in the notice.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects technical errors in the Medicaid and Children’s Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability; Corrections

correcting amendment. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were adopted subject to notice and comment procedures in the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule. As a result, the corrections made through this correcting document are intended to ensure that the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule accurately reflects the policies adopted in that rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule or delaying the effective date of the corrections would be contrary to the public interest because it could result in a period of confusion about the applicability of the rules while those procedures are pending. Further, such procedures would be unnecessary, because the corrections in this document do not make substantive changes in the underlying policies but are limited to technical errors. This correcting document is intended solely to ensure that the Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability final rule accurately reflects the final policy determinations that were set forth in the overall rulemaking

record. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

List of Subjects in 42 CFR Part 438

Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

Correction

In FR Doc. 2016-31650, published on January 3, 2017 (82 FR 37), make the following correction:

On page 39, in the third column, remove amendatory instructions 8 and 9 and their amendments to §438.358.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 438:

PART 438—MANAGED CARE

1. The authority citation for part 438 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§438.358 [Amended]

2. In §438.358—

a. Amend paragraph (c)(3) by removing the reference “(b)(2) of this section.” and adding in its place the reference “paragraph (b)(1)(ii) of this section.”; and

b. Amend paragraph (c)(4) by removing the reference “(b)(1) of this section.” and adding in its place the reference “paragraph (b)(1)(i) of this section.”.

CMS-2390-F4

Dated: February 28, 2017.

Wilma M. Robinson,

Deputy Executive Secretary to the

Department,

Department of Health and Human Services.

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